

PATENT COOPERATION TREATY

PCT

DECLARATION OF NON-ESTABLISHMENT OF INTERNATIONAL SEARCH REPORT

(PCT Article 17(2)(a), Rules 13ter.1(c) and Rule 39)

Applicant's or agent's file reference 1815. 014WO1	IMPORTANT DECLARATION	Date of mailing(day/month/year) 05/01/2010
International application No. PCT/US2009/042494	International filing date(day/month/year) 01/05/2009	(Earliest) Priority date(day/month/year) 02/05/2008
International Patent Classification (IPC) or both national classification and IPC G06F19/00		
Applicant SMITHS MEDICAL MD, INC.		

This International Searching Authority hereby declares, according to Article 17(2)(a), that no International search report will be established on the international application for the reasons indicated below

1. ☐ The subject matter of the international application relates to:
 - a. ☐ scientific theories
 - b. ☐ mathematical theories
 - c. ☐ plant varieties
 - d. ☐ animal varieties
 - e. ☐ essentially biological processes for the production of plants and animals, other than microbiological processes and the products of such processes
 - f. ☐ schemes, rules or methods of doing business
 - g. ☐ schemes, rules or methods of performing purely mental acts
 - h. ☐ schemes, rules or methods of playing games
 - i. ☐ methods for treatment of the human body by surgery or therapy
 - j. ☐ methods for treatment of the animal body by surgery or therapy
 - k. ☐ diagnostic methods practised on the human or animal body
 - l. ☐ mere presentations of information
 - m. ☐ computer programs for which this International Searching Authority is not equipped to search prior art
2. ☒ The failure of the following parts of the international application to comply with prescribed requirements prevents a meaningful search from being carried out:

☐ the description
☒ the claims
☐ the drawings
3. ☐ A meaningful search could not be carried out without the sequence listing; the applicant did not, within the prescribed time limit:

☐ furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.
☐ furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.
☐ pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rule 13ter.1(a) or (b).
4. ☐ A meaningful search could not be carried out without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-bis of the Administrative Instructions, and such tables were not available to the International Searching Authority in a form and manner acceptable to it.
5. Further comments: see further information sheet

Name and mailing address of the International Searching Authority European Patent Office, P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk Tel. (+31-70) 340-2040, Tx. 31 651 epo nl, Fax: (+31-70) 340-3016	Authorized officer Katrin Sommermeyer
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The present set of claims is so broad and unclear that the claims as a whole are not in compliance with the provisions of clarity of Article 6 PCT, as it is particularly burdensome for a skilled person to establish the subject-matter for which protection is sought, the reasons therefor are the following.

The present application contains 87 claims, of which 12 are independent. There is no clear distinction between the independent claims because of overlapping scope. There are so many claims, and they are drafted in such a way that the claims as a whole are not in compliance with the provisions of clarity and conciseness of Article 84 EPC, as it is particularly burdensome for a skilled person to establish the subject-matter for which protection is sought. Moreover, also when making reference to the present description no passages could be found that might suggest or guide to a possible interpretation or understanding of the extent of the scope of the subject matter intended to be claimed. This reasoning is also valid considering 1) that there are so many dependent claims, and they are drafted in such a way that the claims as a whole are not in compliance with the provisions of clarity and conciseness of Article 6 PCT, as they erect a smoke screen in front of the skilled reader when assessing what should be the subject-matter to search; 2) the claims are drafted in such broad and unclear manner that for the skilled person it would be difficult, if not at all impossible, to determining the extent of the scope of the subject matter claimed. Therefore, the non-compliance with the substantive provisions is to such an extent, that a meaningful search of the whole claimed subject-matter could not be carried out (Article 17 (2) PCT and PCT Guidelines 9.30).

Moreover, because also throughout the originally filed description the same vague and broad wordings have been used, no reasonable basis in the application that clearly indicates the subject-matter which might be expected to form the subject of the claims later in the procedure could have been determined, no search at all was deemed possible.

The applicant's attention is drawn to the fact that claims relating to inventions in respect of which no international search report has been established need not be the subject of an international preliminary examination (Rule 66.1(e) PCT). The applicant is advised that the EPO policy when acting as an International Preliminary Examining Authority is normally not to carry out a preliminary examination on matter which has not been searched. This is the case irrespective of whether or not the claims are amended following receipt of the search report or during any Chapter II procedure. If the application proceeds into the regional phase before the EPO, the applicant is reminded that a search may be carried out during examination before the EPO (see EPO Guideline C-VI, 8.2), should the problems which led to the Article 17(2)PCT declaration be overcome.